

**ELIMINATE INCONSISTENCY
AND INEQUITIES OF
CURRENT MEDIAN INCOME
DEFINITIONS
(NAHASDA NEGOTIATED RULE MAKING)**

ISSUE

- I. Currently the NAHASDA allocation formula regulations include several low income components that are based on Formula Median Income (§1000.324 (d), (e) and (f)) and they define Formula Median Income as follows (§1000.302):

Formula Median Income. For purposes of the formula median income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

The Housing and Community Development Act of 1987 (42 U.S.C. 1437a note) defines Median Income for eligibility purposes in public housing and certain other HUD and Rural Development programs as follows:

Median Area Income. Section 567 of Pub. L. 100-242 provided that: "For purposes of calculating the median income for any area that is not within a metropolitan statistical area...the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher: (1) the median income of the county in which the area is located or (2) the median income of the entire non-metropolitan area of the state."

- II. However, in prescribing low-income Indian family eligibility for NAHASDA program activities the NAHASDA statute (25 U.S.C. 4131 (b)) defines low-income family and median income as follows (25 U.S.C. 4131(b) and 4102 (13)):

(13) **LOW-INCOME FAMILY** — The term "low-income family" means a family whose income does not exceed 80% of the median income for the area, as determined by the Secretary ...

(14) **MEDIAN INCOME** — The term “median income” means, with respect to an area that is an Indian area, the greater of –

- (A) the median income for the Indian area, which the Secretary shall determine; or
- (B) the median income for the United States

The NAHASDA regulations (§1000.10) then define median income for Indian areas in another definition section of the regulations as follows:

Median income for an Indian area is the greater of:

- (1) The median income for the counties, previous counties or their equivalent in which the area is located; or
- (2) The median income for the United States

III. This means that currently there is a double standard in the NAHASDA regulations. Tribes and TDHEs are obligated to use the larger of county median income or the national median income for eligibility. However, for funding tribes in the non-metropolitan statistical areas, the median income standard is the larger of the county or the entire non-metropolitan area of the state. Therefore, currently eligibility and formula criteria in the regulations use different median income definitions.

In addition to conflicting standards, another consequence of the current formula median income definition is that tribes in states with lower income populations are being unfairly penalized. They are not getting their rightful share of low-income populations funding because the NAHASDA Indian Housing Block Grant formula does not allow the use of the national median income option.

RESOLUTION

It is therefore proposed that the current regulatory definition for formula median income be changed to match the eligibility median income definition. This is done easily by striking the current definition in §1000.302, Formula Median Income, and replacing it with the eligibility definition as follows:

Formula Median Income. See median income definition in §1000.10